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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Amendment of the Commission's Rules)
Regarding Installment Payment Financing)
For Personal Communications Services)
(PCS) Licenses)
)

WT Docket No. 97-82

COMMENTS

Fidelity Capital ("Fidelity"), by its counsel and pursuant to Section 1.419 of the Commission's Rules, hereby submits its Comments in response to the Petitions for Reconsideration in the above-captioned proceeding.¹ Fidelity and its affiliates have been involved in the development of PCS services and technologies since the earliest days of the industry. To this end, Fidelity was one of the founding investors in GO Communications ("GO"), which was one of the most active bidders in the C-Block PCS auction. During that auction, GO was the high bidder on over 25 licenses covering 50 million "pops." GO's highly experienced management team, who had constructed and operated cellular and PCS systems in the United States and Europe, was prepared to meet any payment obligations arising out of its successful bids in the C-Block auction and to construct and expeditiously commence service to the public. As a responsible bidder, however, GO was forced to withdraw from the C-Block auction without obtaining any

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¹ Amendment of the Commission's Rules Regarding Installment Payments for Personal Communications Services (PCS) Licenses (Second Report and Order and Further Notice of Proposed Rule Making), WT Docket No. 97-82, FCC 97-342 (October 16, 1997) ("Restructuring Order").

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licenses because the auction prices soon reached levels beyond which its rational business model could still forecast profitability and ensure a reasonable return on investment.

In its Restructuring Order, the FCC balanced the need to expedite the commencement of service to the public on C-Block spectrum now held by licensees unable to meet their license payment obligations with the need to preserve the integrity of the FCC's auction process. As a result, the FCC adopted a menu of options designed to provide relief to the C-Block licensees essentially commensurate with their return of spectrum for re-auction. Many C-Block licensees have continued their campaigns through petitions for reconsideration to obtain greater benefits through the C-Block restructuring.² These licensees, however, are not motivated by concern over protecting the integrity and market confidence in the FCC's auction processes.

In Fidelity's view, the financial difficulties now faced by many of the C-Block licensees is, in large part, due to the fact that most simply paid too much for their licenses. Many auction participants appeared to believe that a C-Block license was tantamount to a license to print money. These winning bidders soon discovered, however, that raising the financing to construct their facilities required much more than merely winning an FCC license. Investors, both public and private, required a well thought out business plan with the expectation of achieving profitability and an attractive return on investment. Many discovered after the auction what GO and several others realized during the auction: that the prices paid for many of the C-Block licenses

² See, e.g., NextWave Telecom, Inc. Petition For Reconsideration, WT Docket No. 97-82 (November 24, 1997); Northern Michigan PCS Consortium L.L.C. Petition For Reconsideration, WT Docket 97-82 (November 24, 1997).

exceeded what was reasonable and prudent, jeopardizing the financial viability of their planned systems.

The realization that the C-Block auction prices were too high does little to help licensees now struggling under mountains of unfinanciable debt. Many C-Block licensees have petitioned the Commission for extended payment terms, a reduction in the prepayment option amount to reflect the net present value, enhanced flexibility to the disaggregation option and reductions to the amounts forfeited when selecting an option. Although sympathetic to the plight of these C-Block licensees, it is essential that the Commission ensure that the rules are fair and equitable to all auction participants, including those who dropped out of the auction and those who have successfully built-out operational PCS systems.

Forgiveness of auction debt, without a corresponding return of auctionable spectrum and the imposition of penalties, provides a great disservice to bidders like GO and others who played by the rules, bid responsibly and met their financial responsibilities. Most importantly, the forgiveness of auction debt under these circumstances would undermine the integrity of the FCC's auctions and jeopardize the Commission's ability to conduct reliable auctions in the future. In short, establishing a precedent here that licensees who bid unwisely will receive an FCC bail-out will encourage speculative bidding and discourage sincere bidders who engage in realistic business planning.

The installment payments provided to the C-Block licensees can be likened to a mortgage, with the PCS license being the property and the FCC acting as the lender. While most lenders permit the borrower to pay off the debt early, the principal is never

reduced under these circumstances. By paying the mortgage off early, the borrower achieves a reduction in the amount of interest owed to the lender. Similarly, the Commission has recently permitted the C-Block licensees to select a prepayment option in which the licensee is required to pay the full amount of the loan. Many licensees want the amount of the debt to be reduced, however, to reflect the net present value of the bid amount. Just as the amount of the principal in a mortgage does not get reduced when paying the mortgage off early, neither should the amount of the license debt be reduced just because the licensee elects to pay it off early. The benefit comes in the savings of 10 years interest.

ClearComm suggests, for example, that in the disaggregation option, the forfeiture of the downpayment on the portion of the spectrum returned to the Commission for reauction is too harsh and punitive. For every license that is disaggregated, however, the Commission must then reauction the returned spectrum, at a cost to the taxpayers of this country.³ Moreover, the licensee's failure to commence service on the returned spectrum has imposed costs on the taxpayers through reduced competition. Fidelity thus believes that the present terms are fair and help defray the costs of reauctioning the returned spectrum. Furthermore, the Commission permits C-Block licensees to disaggregate the spectrum on their own, without having to rely on the FCC to perform this task. If ClearComm believes the Commission is not providing an attractive disaggregation policy, then it is free to disaggregate its spectrum privately to another qualifying entity.

³ ClearComm, L.P. Petition For Reconsideration, WT Docket No. 97-82 (November 24, 1997) at 13-14.

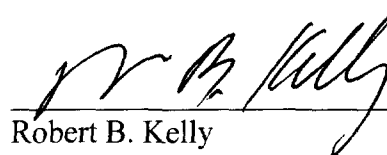
Fidelity believes, however, that the Commission's disaggregation plan will be more attractive to most licensees than terms available in a private disaggregation.

For these reasons, Fidelity believes the Restructuring Order presents a fair and balanced plan to provide relief to struggling C-Block licensees, while not disadvantaging licensees who are successfully building out their systems. Fidelity thus urges that the Commission retain the menu options adopted in the Restructuring Order on reconsideration.

Respectfully submitted,

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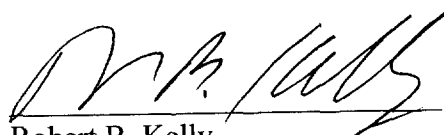
CERTIFICATE OF SERVICE

I, Robert B. Kelly, do hereby certify that copies of the foregoing Comments in WT Docket No. 97-82 were served this 30th day of December, 1997 via U.S. mail, first-class, postage paid, to the following:

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